U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 11244076

Date: FEB. 3, 2021

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Extraordinary Ability)

The Petitioner, a chief technology officer, seeks classification as an alien of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner had not satisfied any of the ten initial evidentiary criteria, of which he must meet at least three.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 203(b)(1)(A) of the Act makes visas available to immigrants with extraordinary ability if:

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate recognition of his or her achievements in the field through a one-time achievement (that is, a major, internationally

recognized award). If that petitioner does not submit this evidence, then he or she must provide sufficient qualifying documentation that meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010). (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

II. ANALYSIS

The Petitioner indicates that he has served as the chief technology officer for [redacted] since 2016. Because the Petitioner has not indicated or established that he has received a major, internationally recognized award at 8 C.F.R. § 204.5(h)(3), he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).

In denying the petition, the Director determined that the Petitioner had not satisfied any of the initial evidentiary criteria. On appeal, the Petitioner maintains eligibility for four criteria. After reviewing all of the presented evidence, the record does not reflect that the Petitioner meets the requirements of at least three criteria.

> *Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.* 8 C.F.R. § 204.5(h)(3)(iii).

In order to fulfill this criterion, the Petitioner must demonstrate published material about him in professional or major trade publications or other major media, as well as the title, date, and author of the material.[1] The Petitioner provided articles posted on cbsnews.com (2), cnn.com, washingtonpost.com, axios.com, fortune.com, forbes.com (2), sfchronicle.com, reuters.com, ft.com, bloomberg.com, wired.com, wsj.com, ttnews.com (3), thedrive.com, freightwaves.com (2), businessinsider.com, mashable.com, and autonews.com. However, none of the articles reflect published material about the Petitioner. Rather, the articles show published material about [redacted]. In fact, 14 articles never mention the Petitioner, 7 articles briefly indicate his name as being a co-founder of [redacted] as background information about the company, and 2 articles briefly quote the Petitioner regarding [redacted] technology and [redacted] trucks. Articles that are not about an alien do not fulfill this regulatory criterion. *See, e.g., Negro-Plumpe v. Okin,* 2:07-CV-820-ECR-RJJ at *1, *7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles regarding a show are not about the actor).

[1] *See* USCIS Policy Memorandum PM 602-0005.1, *Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14* 7 (Dec. 22, 2010), https://www.uscis.gov/policymanual/HTML/PolicyManual.html.

Here, the Petitioner did not establish that any of the articles represent published material about him consistent with this regulatory criterion.

Accordingly, the Petitioner did not demonstrate that he meets this criterion.

> *Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.* 8 C.F.R. § 204.5(h)(3)(v).

In order to meet the regulation at 8 C.F.R. § 204.5(h)(3)(v), a petitioner must establish that not only has he made original contributions but that they have been of major significance in the field.[2] For example, a petitioner may show that the contributions have been widely implemented throughout the field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance in the field.

The Petitioner argues his eligibility for this criterion based on his "patented inventions, rave reviews about his work, and letters from leading experts." The record contains evidence of two recently approved patents listing the Petitioner as one of the inventors. In general, a patent recognizes the originality of an invention or idea but does not necessarily establish a contribution of major significance in the field. As discussed further below, although the Petitioner expresses optimism and others opine that technology using his patents shows promise, he did not demonstrate how the patents already qualify as contributions of major significance in the field, rather than prospective, potential impacts. Here, the significant nature of his patents has yet to be determined.

Further, the Petitioner references articles that reported on [redacted] and its continuous testing of [redacted] driving. For example, a 2019 article posted on forbes.com reported on [redacted] being "the first company to test an [redacted] on a stretch of U.S. highway – and it so be combining an [redacted] system with a [redacted] operator standing by to [redacted] the vehicle when necessary." Another 2019 article posted on autonews.com indicated that "the [redacted] test was a one-off event, not a permanent switch in [redacted]'s overall testing procedure," "it represents the first step in a gradual process in which such [redacted] test will increase in frequency as the company eyes the start of [redacted] commercial operations in the second half of 2020," and "[e]fforts such as [redacted]'s last week are a step along the route to making [redacted] trucking a reality." The samples indicated here, as well as the evidence discussed under the published material criterion, relate to [redacted]'s developing and current testing of [redacted] vehicles. The documentation, however, does not demonstrate that the Petitioner's patents have already significantly impacted the field in a major way. The record, for example, does not reflect that his patents resulted in widespread usage or influenced in a majorly, significant manner. Instead, the record shows the effect of his patents in limited means at the testing stage of a long process with speculative reference about futuristic applicability. In fact, the Petitioner's brief states that "[w]hile [redacted]'s trucks *will* be able to navigate [redacted] on highways, they *will* be [redacted] when they exit highways," and "[t]his *will* transform the trucking industry by allowing truck drivers [to] enjoy a sedentary life." (emphasis added).

[2] *See* USCIS Policy Memorandum PM 602-0005.1, *supra,* at 8-9 (finding that although funded and published work may be "original," this fact alone is not sufficient to establish that the work is of major significance).

Likewise, the Petitioner provided recommendation letters discussing his role in developing technology at [redacted]. For instance, "[the Petitioner] architected the system from the beginning and used his skills to lead his engineering team through different phases of development" [redacted]; and [redacted]' unique approach is a combination of practical technology development and a deep understanding of the underlying economic and technological forces directing the US trucking market," and "[the Petitioner's] efforts enabled [redacted] to further develop their important technology" [redacted]. Here, the letters credit the Petitioner with developing technology at [redacted] without showing how his contributions are viewed in the overall field as being majorly significant.[3]

In addition, the letters speculate on the possibility and potential of the technology at some undetermined time. For example, "the [redacted] aspects of [redacted]s system *could* be deployed to [redacted] transportation systems," "provides a roadmap of how the trucking industry *can* apply [redacted] systems," and "[t]hese technologies have certainly caused a shift in how the trucking industry *will* operate in the *future*, but they also have the *potential* to revolutionize a wide range of field" [redacted]. (emphasis added). Although the letters opine on the possibility of the influence of the technology at some time in the future, they do not demonstrate how his patents and work at [redacted] have already impacted, influenced, or affected the field in a majorly significant manner beyond the company.

The letters do not contain specific, detailed information explaining how his contributions have been majorly significant in the field. Letters that specifically articulate how a petitioner's contributions are of major significance to the field and its impact on subsequent work add value.[4] On the other hand, letters that lack specifics and use hyperbolic language do not add value, and are not considered to be probative evidence that may form the basis for meeting this criterion.[5] Moreover, USCIS need not accept primarily conclusory statements. *1756, Inc. v. The U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.C. Dist. 1990).

Finally, the Petitioner contends that [redacted] invited him to speak at a conference discussing the future of the trucking industry." Besides submitting screenshots from [redacted]n confirming his speaking engagement, the Petitioner did not establish that his conference presentation resulted in an original contribution of major significance in the field. Publications and presentations are not sufficient under 8 C.F.R. § 204.5(h)(3)(v) absent evidence that they were of "major significance." *See Kazarian v. USCIS,* 580 F.3d 1030, 1036 (9th Cir. 2009), *aff'd in part*, 596 F.3d 1115.

For the reasons discussed above, considered both individually and collectively, the Petitioner has not shown that he has made original contributions of major significance in the field.

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[3] *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8-9; *see also Visinscaia*, 4 F. Supp. 3d at 134-35 (upholding a finding that a ballroom dancer had not met this criterion because she did not corroborate her impact in the field as a whole).

[4] *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8-9.

[5] *Id.* at 9. *See also Kazarian*, 580 F.3d at 1036, aff'd in part 596 F.3d at 1115 (holding that letters that repeat the regulatory language but do not explain how an individual's contributions have already influenced the field are insufficient to establish original contributions of major significance in the field).

III. CONCLUSION

The Petitioner did not demonstrate that he satisfies the criteria relating to published material and original contributions. Although the Petitioner claims eligibility for two additional criteria on appeal, relating to leading or critical role at 8 C.F.R. § 204.5(h)(3)(viii) and high salary at 8 C.F.R. § 204.5(h)(3)(ix), we need not reach these additional grounds. As the Petitioner cannot fulfill the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3), we reserve these issues.[6] Accordingly, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we advise that we have reviewed the record in the aggregate, concluding that it does not support a conclusion that the Petitioner has established the acclaim and recognition required for the classification sought.

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top. USCIS has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994). Here, the Petitioner has not shown that the significance of his work is indicative of the required sustained national or international acclaim or that it is consistent with a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field, and he is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2). Although the record contains promising work of Starsky, the Petitioner did not establish that he is among the upper echelon in his field.

For the reasons discussed above, the Petitioner has not demonstrated his eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.

[6] *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach); *see also Matter of L-A-C-*, 26 I&N Dec. 516, n.7 (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).